

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR-201-2014(O&M)

Date of decision:-17.1.2023

Smt.Anar Devi (since deceased) through her LRs

...Petitioners

Versus

Moti Lal

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Sandeep Jasuja, Advocate
for the petitioners.

Mr.Sudhir Aggarwal, Advocate
for the respondent.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that petitioner/landlady Smt. Anar Devi, aged 75 years wife of late Sh.Kanhaiya Lal, resident of Subhash Nagar, Gurgaon had brought a petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as the Act) against respondent Moti Lal son of Sh.Hari Singh, Raymond Tailor, Opposite Dhobi Ghat, Old Railway Road, Gurgaon, seeking ejectment of the latter from shop forming part of premises bearing Municipal No.291/7 situated at Subhash Nagar, Gurgaon depicted by letters ABCD and shown in red colour in the site plan attached with the petition (hereinafter referred to as the demised shop), the details thereof being given in para No.1 of the petition.

2. As per the case of the petitioner, the demised shop is required by her for bona fide personal use and occupation since she is having three

sons, who are married residing with their wives and children; one son of the petitioner, namely Rakesh along with his wife, one son and two daughters are residing on first floor of the house, whereas second son namely Raj Kumar along with his wife, three sons and one daughter are residing on the ground floor and one more son of petitioner, namely, Ramesh is residing at Laxmi Nagar, Delhi in a rented premises since long due to insufficient accommodation available in the house. Furthermore, marriage of Deepak son of Ramesh is to be performed and there is no portion in the house available, which can be given to him after marriage, therefore, the necessity of the petitioner for further accommodation is bona fide and respondent is liable to be ejected for that reason. The respondent is in possession of the demised shop on payment of rent @ Rs.250/- per month excluding house tax etc. and he had paid rent up to 10.6.2009.

In the petition, the petitioner had further contended that respondent is in arrears of rent w.e.f. 11.6.2009 till date and he is adamant to change the nature and user of the demised shop in question. The petitioner further contended that she has not occupied or vacated any shop/house in Gurgaon city or else where in Haryana and Punjab since 1949.

According to the petitioner, she requested the respondent several times to vacate the shop but to no effect, as such, she brought the ejectment petition before Rent Controller, Gurgaon on 12.10.2009.

3. On getting notice, the respondent appeared and filed written reply contesting the petition, inter alia raising preliminary objections that

no ground for ejectment is available to the petitioner; the petitioner has not approached the Court with clean hands and has withheld many facts; the petitioner had been pressurizing the respondent in the past to vacate the demised shop; she had initiated litigation against the respondent previously but she lost; she has again come to the Court on false and fabricated grounds in order to get the demised shop vacated; as a matter of fact the petition has been filed just to harass the respondent; the petition is false, frivolous and vexatious to the knowledge of the petitioner.

On merits, the respondent admitted the demised premises to be a shop but refuted that it is part of premises no.291/7. According to him the demised shop is an independent unit; the site plan attached with the petition and boundaries of the shop given in para No.1 of the petition were alleged to be wrong and not as per spot. The respondent denied that shop in question is required by the petitioner for personal use. According to the respondent, the petitioner is in possession of a three storied building just adjoining the demised shop and she has raised constructions over the shop in question in the shape of one room each on the first and second floor and the accommodation in that building is sufficient for the requirement of the whole of the family of the petitioner. The respondent denied that the ground of personal necessity is available to the petitioner or that he has not paid the due rent to the petitioner since 11.6.2009 or for that matter he is adamant to change the nature and user of the shop in question. According to him, he was always ready to pay the rent to the petitioner against receipt but petitioner herself refused to issue receipt after receiving rent. According to the respondent, he has tendered the rent

from 11.6.2009 to 10.3.2010 for 9 months @ 250/- per month amounting to Rs.2,485/- along with interest and cost as assessed by the Court on 4.3.2010, therefore this ground is no more available to the petitioner; the petitioner is not entitled to claim house tax. Refuting the remaining assertions, the respondent prayed for dismissal of the petition.

4. The petitioner had filed replication controverting the allegations in the written reply whereas reiterating the averments in the petition.

5. On the pleadings of the parties, following issues were framed:

1. Whether the petitioner is entitled to vacant possession of the suit property by way of eviction of respondent on the grounds mentioned in the petition? OPP
2. Whether the present petition is not maintainable? OPR.
3. Relief.

6. Both the parties led evidence in respect of their claims.

During the course of evidence of the petitioner, Sh.Rakesh Kumar Special Power of Attorney holder of petitioner got his statement recorded as PW1 submitting his affidavit Ex.PW1/A in which he repeated on oath the case of the petitioner as given in the petition. The petitioner further examined Ramesh Kumar as PW2, who supported the case of the petitioner.

In rebuttal, the respondent got his statement recorded as RW1 submitting his affidavit as RW1/A in which he repeated on oath the version given in the written reply.

7. After hearing arguments, learned Rent Controller, Gurgaon decided issue No.1 in favour of the petitioner and against the respondent, issue No.2 was decided against the respondent and in favour of the petitioner. Resultantly, vide judgment dated 29.3.2012 the petition was accepted and the respondent was ordered to be ejected from the demised premises on the ground of bona fide necessity of the petitioner and her sons and he was directed to vacate the demised premises within a period of three months from the date of passing of that judgment, failing which, the petitioner would be entitled to take possession through agency of the Court.

8. The respondent was aggrieved by the said judgment and he had filed an appeal before the Court of Appellate Authority, Gurgaon, which was assigned to Additional District Judge-cum-Appellate Authority, Gurgaon, who vide judgment and decree dated 19.8.2013 accepted the appeal, set aside the judgment/ejectment order passed by the Rent Controller, Gurgaon, resultantly dismissed the ejectment petition with costs.

9. Now it was turn of the petitioner/landlady to feel dissatisfied and she has knocked at the door of this Court by way of filing the present revision petition, notice of which was given to respondent/tenant, who has put in appearance through counsel.

10. I have heard learned counsel for the parties besides going through the record.

11. In this case the relationship of landlord and tenant between the parties is not disputed. The main ground taken in the ejectment

petition is with regard to the personal necessity of the landlady/petitioner and her family. Rakesh Kumar son of the petitioner/landlady appeared as her Special Power of Attorney stepping into the witness-box as PW1. He had submitted his affidavit Ex.PW1/A as part of his examination-in-chief in which he has repeated on oath case of the petitioner as given in the petition. In the affidavit, it is specifically pleaded that petitioner and her family require additional accommodation for the residence of the family. He was cross-examined at length on behalf of the respondent but he remained unshaken with regard to the requirement of additional accommodation.

12. As against that, Moti Lal appearing as RW1 tendered in evidence his affidavit as Ex.RW1/A in which he has denied such ground of personal necessity being available to the petitioner. The Rent Controller on analysis of the evidence adduced by the parties in light of the pleadings of both the parties and considering the legal position had come to the conclusion that the petitioner does have bona fide requirement for additional accommodation and she is entitled to order of ejectment in respect of the demised premises. Before the Rent Controller, Gurgaon, the respondent/tenant had taken up a plea that the demised premises was being used as a shop for commercial purpose and it cannot be got vacated for residential purposes. Such plea taken by respondent/tenant along with the judgment referred to by learned counsel representing respondent/tenant **Shabir Ahmed Versus Sham Lal & Anr. 2003(1) LJR 687(SC)** and **Shankar Lal Versus Madan Lal & Ors.2011(1) RCR 139** were taken into consideration and such plea of the respondent was

rejected observing that it is an admitted fact that the remaining portion of the said building was being used for residential purposes and the demised premises was part of the whole building, which was being used for residential purposes and further the respondent has not been able to produce any such document from which it could be held that the demised premises can be used only for commercial purposes and not for residential purposes. While making such observations reliance was placed upon judgments by this Court i.e. **Bachan Lal Versus Yogeshwar Lal Mehta 2006(2) Rent Control Reporter 395** to the effect that a shop being used for commercial purposes forming part of the residential house is a residential premises as well as other judgment **Rajinder Kumar Versus Niranjan Lal and Ors. 2006(2) Rent Controller Reporter 608** that where a room in the residential building was let out as shop, the same cannot be said to be commercial building and the landlord is entitled to evict the tenant from the said room for bona fide requirement of residence. Learned Rent Controller giving detailed discussion has observed that the landlord is entitled to get the tenant ejected from the demised shop for her personal necessity of further residential accommodation for her family.

13. I find that the view taken in the matter by learned Rent Controller, Gurgaon was proper and appropriate, whereas it was not so with regard to the view adopted by learned Additional District Judge-cum-Appellate Authority, Gurgaon. Learned Appellate Authority had not only wrongly analysed the evidence but misinterpreted the law also while reversing the finding of the Rent Controller on issue No.1 and setting aside the ejectment order. Learned Appellate Authority had taken a wrong

view that demised shop in possession of the respondent/tenant is not part of residential building and is rather an independent unit from the very beginning. It was held to be a commercial unit. Learned Appellate Authority had placed reliance upon judgment passed by this Court in M/s **Bharat Electricals Versus Dr.Sukhdev Raj, 2012(2) RCR(Civil)84** quoting the following observations:

“If some portion of a residential building, which is converted into a shop and is let out for non-residential purposes, is having no access from its backside or any side to the main residential building and has only one opening towards the main market, then it would be essentially a building used for non-residential purpose in the residential building and would be a separate unit/building for the purpose of the landlord to seek eviction of the tenant for non-residential purpose and not for residential purpose.”

However, if we see the site plan relied upon and proved in evidence by the petitioner, then it comes out that there is a gallery on the southern side of the shop, which leads to remaining part of the house. As regards the shop in question being not connected with remaining part of the house through an opening of any door or window on the northern side and no opening being there on eastern side, normally when a room which is forming part of a residential house is let out to a tenant for doing some business or for commercial purposes, for sake of privacy and safety, no openings are either made and if they are already there then they are discontinued. Therefore, non absence of any door connecting the shop with the other portion of the house cannot indicate that it is an

independent unit. A look at the site plan goes to show that the shop in question is in the form of a room though provided with a shutter on the southern side towards road and is part of the house.

14. The respondent/tenant has not produced any counter site plan or brought on record any evidence to show that the nature of the premises in question has been got changed to commercial whereas the remaining part of the house remains to be residential.

15. Learned counsel for the petitioner has referred to judgment *Tejinder Singh Jaggi Versus Rajiv Chopra (died) through LRs and others, 2009(4) RCR(Civil) 36* wherein this very issue came up for consideration before this Court and it was observed that when a building is constructed as a single residential house and used as a residential building, though subsequently two partitions in the building are made and the portion abutting the road is let out as shops that would not change the nature of portion of building from residential to non residential and the landlord is entitled to eject the tenants from that portion for bona fide residential purpose. In this very judgment, it was observed that the test to determine whether a building is a residential or non residential one, is that if there are zoning regulations building be understood as a residential building or non residential building depending on how the zoning regulations exist and if zoning regulations do not exist, the building must be understood as how it was built in the first place and how it was used in area or the purpose of letting though of some value can never be decisive.

16. In this case, no evidence has been brought that there are some zoning regulations applicable in the area. It is consistent case of the

petitioner that the building was constructed for residential purpose and in remaining part of the building the petitioner along with her other family members is residing . The demised shop comes out to be the part of the same building and not an independent unit having commercial nature. A perusal of the affidavit of the respondent, which is submitted in his evidence goes to show that though he has alleged in para no.1 that the demised shop along with the other joining shop with a gallery in between both the shops were constructed independently by the petitioner and Smt.Hansa Devi in the year 1978 on the front portion of the plot measuring 30' x 60' but no corroborative evidence in that regard has been produced by the respondent. In his cross-examination when his attention was drawn to site plan Ex.P2 produced by the petitioner, he admitted that the shop in dispute and the gallery had been rightly depicted therein. He admitted that on the remaining part of the building, the petitioner along with her family are residing.

17. Learned counsel for the petitioner has further referred to judgment **Bhagat Singh Sodhi Versus Union of India** passed by this Court in CR-1526 of 1981 decided on 26.2.2003, wherein a Single Judge of this Court had observed that when a building is not converted to non-residential with permission of Rent Controller, it will continue to be residential building and landlord is entitled to evict the tenant on the ground of bona fide requirement for residence.

One more judgment **Baldev Singh Versus Sat Pal Shukla** passed by this Court in CR No.1436 of 1986 decided on 2.2.1987 has been referred to by learned counsel for the petitioner wherein a Single

Judge of this Court dealing with ejectment of tenant from a room in building let out to such tenant for tailoring business had observed that the building continues to be residential and landlord is entitled to eject the tenant on the ground of bona fide requirement.

In Full Bench judgment of this Court *Hari Mittal Versus B.M. Sikka, 1986(1) PLR 1*, which was under Haryana Urban (Control of Rent & Eviction) Act, 1973, it was observed that when a residential building was let out for non-residential purpose without obtaining the written permission of the Rent Controller in terms of Section 11 of the Act, the building would continue to be a residential building and the landlord is entitled to seek the ejectment on the ground of his bona fide personal requirement.

18. In the present case also, there is nothing to show that written permission of the Rent Controller had been obtained for renting out the demised shop to the tenant for non-residential purpose in terms of Section 11 of the Act, therefore, nature of the building remains residential and the plea of the respondent/tenant that it has commercial nature cannot be accepted.

19. The demised shop is not proved to be an independent unit used as a shop from the very beginning. PW2 Ramesh has specifically denied this fact. Learned Appellate Authority has drawn an inference that the shop was constructed prior to construction of the house located behind mainly on the basis of assumptions and guess work and not on the basis of legally admissible evidence available on the record. Therefore, the judgment passed by the learned Appellate Authority, Gurgaon cannot be

sustained.

20. Learned Appellate Authority, Gurgaon clearly fell in error in reversing the legal and valid judgment passed by the Rent Controller, Gurgaon. There was no reason or occasion to interfere therewith. Therefore, the judgment passed by Appellate Authority, Gurgaon is set aside and the judgment passed by the Rent Controller, Gurgaon is restored. The respondent is directed to vacate the demised shop within a period of two months of the passing of this judgment.

21. The revision petition stands allowed accordingly.

Since the main revision petition stands allowed, the miscellaneous application(s), if any, stand disposed of accordingly.

17.1.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No